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LP*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-13359 (VFP)

(Joint Administration Requested)

**LIMITED OBJECTION OF TYLER BROADWAY/CENTENNIAL TO DEBTORS’
NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Tyler Broadway/Centennial LP, (“Tyler Broadway” or “Landlord”), by and through counsel, and hereby files this Limited Objection (the “Objection”) to Debtors’ *Notice to Contract Parties to Potentially Assumed Executory Contract and Unexpired Leases* [Docket No. 714] (the “Cure Notice”), and respectfully represents as follows:

1. On April 23, 2023 (the “Petition Date”), Bed Bath & Beyond, Inc. and its affiliated debtors and debtors-in-possession (the “Debtors”), filed their voluntary petition for relief under

Chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”).

2. The Debtors have continued to operate their business and manage their properties as debtor’s-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. On June 13, 2023, the Debtors filed the Cure Notice [Docket No. 714].

4. Prior to the Petition Date, Debtors leased retail space from Tyler Broadway at a retail location at Sherman Town Center, Sherman, Texas pursuant to an unexpired lease of nonresidential real property (the “Lease”).

5. The Lease appears on the Cure Notice with Debtors’ accompanying assertions regarding the proper cure amounts.

6. The Lease is a lease “of real property in a shopping center” as that term is used in Section 365(b)(3). *See In re Joshua Slocum LTD*, 922 F.2d 1081 (3d. Cir. 1990).

CURE CLAIM OBJECTION

7. Section 365(b) provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

8. Tyler Broadway objects to the cure amounts proposed for the Lease included in Debtors’ Cure Notice (the “Proposed Cure Amount”). Tyler Broadway herein reserves the right to

file supplementary cure objections. Tyler Broadway objects to the Proposed Cure Amount as it is inaccurate according to Landlord's books and records. The actual cure amount under the Lease is no less than \$28,342.15.

9. As the Debtors' Proposed Cure Amount does not take into consideration the passage of time between the filing of the Cure Notice and the effective date of any assumption and assignment of the Lease by the Debtors, any order that is entered establishing a cure amount with respect to the Lease should require that the Debtors (i) comply with all obligations under the Lease pending its assumption and assignment, and (ii) cure any additional defaults that may occur under the Lease between the date of Landlord's proof of claim and the effective date of any assumption and assignment by the Debtors. *See* 11 U.S.C. § 365(b)(1).

10. Further, Landlord may be entitled to certain attorneys' fees and costs under Section 365 of the Bankruptcy Code. *See In re F&N Acquisition Corp.*, 152 B.R. 304, 308 (Bankr. W.D. Wash. 1993); *In re Westworld Community Healthcare, Inc.*, 95 B.R. 730, 733 (Bankr. C.D. Cal. 1989); and *In re Child World, Inc.*, 161 B.R. 349, 353-354 (Bankr. S.D.N.Y. 1993). The cure amount should include all of Landlord's attorneys' fees and costs to which it is entitled under the Lease.

11. Tyler Broadway further objects to the assumption of the Leases absent payment of all Cure Amounts owed thereunder from June 26, 2023 through the effective date of assumption, including any amounts that will become due or be invoiced on or after June 26, 2023 (including, but not limited to, additional amounts, not yet known, that accrued following June 26, 2023, such as year-end adjustments to various items including, but not limited to, real estate taxes, common area maintenance, percentage rent and insurance), as well as attorneys' fees and costs.

12.

JOINDER

13. In addition to the foregoing, Tyler Broadway further joins in the objections filed by the Debtors' other landlords to the extent that such objections are not inconsistent with the relief requested in this Objection.

RESERVATION OF RIGHTS

14. Tyler Broadway hereby reserves its rights to make such other and further objections as may be appropriate to the Leases, including, but not limited to, objections regarding adequate assurance of future performance under Section 365.

CONCLUSION

15. For the reasons set forth above, Tyler Broadway respectfully requests that this Court (i) sustain this Objection; (ii) require that any order authorizing the assumption of the Lease affirmatively requires the Debtors to pay all amounts accrued but not yet billed following June 26, 2023, including attorneys' fees and expenses; and (iii) grant Tyler Broadway such further relief as it deems proper.

Dated: June 26, 2023

Respectfully Submitted,

/s/ Michael Korik

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CERTIFICATE OF SERVICE

I, Michael Korik, hereby certifies that on this the 26th day of June 2023, a true a correct copy of the foregoing document was served via CM/ECF upon all parties registered to receive such notice in these above-referenced cases.

/s/ Michael Korik

Michael Korik